Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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MAY 24 1996

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket 96-61
	)	

REPLY COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.

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Dated: May 24, 1996

EXECUTIVE SUMMARY

MFS Communications Company, Inc. opposes the Commission's proposal of mandatory forbearance, which is unauthorized under Section 10(a) of the Telecommunications Act of 1996 and which contravenes the public interest. MFS reiterates its proposal of permissive tariffing for non-dominant providers of interexchange service, which was suggested by MFS in its initial comments filed in this docket. MFS notes that commenters generally are supportive of, and havesufficiently demonstrated that, a policy of permissive tariffing for non-dominant providers of interexchange service will serve the public interest by continuing to foster and to enhance competition in the interexchange marketplace. MFS urges the Commission to reconsider its tentative conclusion to forbid non-dominant providers of interexchange service from filing tariffs pursuant to Section 203 of the Act, and to adopt the industry-favored policy of permissive tariffing supported herein.

In addition, MFS emphasizes that permissive tariffing is warranted only for competitive, non-dominant carriers in the interstate, interexchange marketplace, and suggests that the Commission consider alternative methods of filing tariffs, such as accepting tariffs via electronic filings or diskettes.

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Before the

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Washington, D.C. 20054

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	CC Docket 96-61
Interstate, Interexchange Marketplace	)	

REPLY COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.

MFS Communications Company Inc. ("MFS"), by its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") rules, hereby respectfully submits the following reply comments in response to the Commission's Notice of Proposed Rulemaking ("*NPRM*") regarding the interstate, interexchange marketplace.[1/]

INTRODUCTION AND SUMMARY

In its initial comments, MFS demonstrated that the Commission's proposed policy of *mandatory* detariffing for all non-dominant providers of interstate, interexchange service was neither authorized by Congress, nor in the public interest. As a result, in lieu of a mandatory detariffing regime, MFS recommended that the Commission implement a policy of permissive tariffing, in which non-dominant service providers are permitted to file tariffs. MFS has found overwhelming support for this idea, from the vast majority of interexchange carriers ("IXCs") and resellers who filed comments in this proceeding, as well as from various local exchange

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1/ *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96061, FCC 96-123 (Mar. 25, 1996) ("*NPRM*").

carriers ("LECs').[2] Such support clearly demonstrates that a permissive tariffing policy, involving voluntary compliance with the Commission's tariffing requirements, is favored by the telecommunications industry and is in the public interest

I. MANDATORY DETARIFFING IS NEITHER SUPPORTED BY THE TELECOMMUNICATIONS ACT NOR IN THE PUBLIC INTEREST.

A. The Commission's Proposed Policy of Mandatory Forbearance Exceeds Its Authority Under the Act.

As MFS explained in its initial comments, Section 10(a) of the Telecommunications Act of 1996[3] may require the Commission *to "forbear," or refrain from,* requiring non-dominant providers of interexchange service to comply with Section 203 tariff filing requirements where the standards under the Telecommunications Act have been met.[4] However, it goes against the universally accepted definition of the term "forbearance" for the Commission to assume that Section 10(a) therefore authorizes it *to forbid* non-dominant providers of interexchange service from filing tariffs of their own volition.

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[2] *See, e.g.*, Comments of: Cable & Wireless, Inc. at 5; Frontier Corporation at 3-7, GTE at 7-8, LCI International Telecom Corp. at 1-4, LDDS WorldCom at 4-6, MOSCOM at 1 , Pacific Telesis at 3, Sprint at 2-7 , Ursus Telecom Corp. at 1, Business Telecom Inc. at 4-5, The Casual Calling Coalition at 12, Excel Telecommunications, Inc. at 2-5. Other commenters opposed mandatory forbearance for small business and residential service customers, noting the inherent value of tariff filings. *See, e.g.*, Comments of: BTNA at 1-3, GCI at 2, MCI at 3.

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996) ("*Telecommunications Act*")

[4] MFS Initial Comments at 2-3 (citing the Telecommunications Act at § 401 (adding § 10(a)). This test authorizes the Commission to forbear from enforcing the tariff filing requirements of Section 203 of the Act if the Commission determines that such enforcement is unnecessary to ensure that the charges, practices, classifications or regulations for that service are just and reasonable, or are not unjustly or unreasonably discriminatory; that such enforcement is unnecessary for the protection of consumers; and detariffing is consistent with the public interest. The Telecommunications Act at § 401 (adding § 10(a)).

As discussed in MFS' initial comments, nowhere in Section 10(a), or elsewhere in the Telecommunications Act, did Congress state that non-dominant IXCs may not file tariffs, or that the Commission may no longer accept tariff filings. Rather, Congress permitted the Commission *to refrain from continuing to impose tariffing requirements*, as long as the Commission has determined that the test set forth in Section 10(a) was satisfied. As many commenters have recognized, the Commission thus has no authority *to prohibit* voluntary compliance with tariff filing requirements.[5]

The Commission's argument that it previously enacted a similar policy of mandatory detariffing for CMRS providers does not provide precedent for detariffing of the interexchange market, given that the two telecommunications industries are structurally dissimilar,[6] and that, as a matter of performance, the detariffing of CMRS providers has not yielded competitive price reductions that even approach the performance of the long distance market. If anything, the CMRS experience arguably demonstrates that public disclosure of prices through tariffs creates greater competitive pressure to reduce rates to meet or beat the lowest published price, than in markets where rates are not publicly disclosed in tariffs.

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[5] *See, e.g.*, Comments of: AT&T at 7-13, GTE at 4-6, LDDS WorldCom at 6-9, The Casual Calling Coalition at 12-13.

[6] In cellular markets, typically only two carriers are authorized to provide service, whereas there are scores of long distance providers in every long distance market. Also, provision of CMRS service requires customers to purchase hardware (e.g. a cellular phone) configured for their service provider, whereas no such specialized hardware is required in long distance markets. In cellular markets, customers pay for calls received and sent, whereas long distance callers typically pay only for calls they actually make. Finally, CMRS calls are largely local in nature, whereas long distance calls, by definition, are not local.

B. A Policy of Permissive Tariffing Is In the Public Interest.

Even assuming arguendo that the Commission possessed the authority under the Act to require mandatory detariffing for non-dominant IXC filings, *and MFS reiterates that the Commission does not have such authority,* tariff filings are in the public interest, as demonstrated by the majority of IXC, reseller and public interest groups in their initial comments, because tariffs serve to promote, rather than to obstruct, competition. The public interest is served still further by a policy of permissive tariffing that offers carriers the benefits of filing tariffs, together with the flexibility of tailoring efficient methods of contracting with individual business customers.

As revealed by MFS in its initial comments, tariffs reduce transaction costs by serving as standardized contracts between IXCs and their customers.[7] This is particularly significant for smaller IXCs, which, under the Commission's proposed policy of mandatory detariffing, would find themselves effectively barred from the interexchange market by the extraordinarily high transaction costs that would be incurred in developing, tracking and maintaining thousands of individual customer contracts.

As well, the presence of publicly available rates and terms of service actually facilitates the functioning of a competitive market. Tariffs allow a carrier to be more responsive to the market by enabling it to expeditiously and publicly alter its prices or services, through a single, universal revision to its tariff, in order to respond to changes in the marketplace. Rather than enhancing price collusion, as suggested by the Commission,[8] tariff filings actually serve to promote competition by providing the public with the free flow of market information regarding

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[7] MFS Comments at 6.

[8] *NPRM* at para. 30.

available prices, services and market opportunities. In a competitive market, such as the interexchange market, carriers with competitive prices *want* to afford their customers the opportunity to determine how effectively competitive their prices and services are, through comparisons with the offerings of other carriers. Also, carriers and new entrants cannot make economically rational entry decisions without some information regarding market price--information that is provided by tariff filings.

Even BellSouth, which submits evidence that there is no meaningful price competition among the largest IXCs, AT&T, MCI and Sprint, acknowledges that a policy of mandatory detariffing alone will not succeed in the elimination of such alleged price coordination.[9/] And as Pacific Telesis notes, the surest way to rectify suspected price collusion practices is to facilitate the prompt entry of competition.[10/] This is done by lowering those transaction costs that create barriers to entry. Surely the option of voluntarily filing a tariff on one day's notice, with no cost support, and which is presumed lawful unless a complaint is filed against the carrier, imposes no such barrier. Rather, permissive tariffing serves to lower barriers to entry by eliminating the need to maintain and enforce numerous individualized contracts, as well as supplying much-needed market information on prices and services, in order to avoid erroneous and expensive guesswork that inevitably will be passed on to the consumer.

9/ BellSouth Comments at 3.

10/ Pacific Telesis Comments at 9.

II. PERMISSIVE TARIFFING IS WARRANTED ONLY FOR COMPETITIVE CARRIERS.

For purposes of clarification, MFS emphasizes that *any policy* enacted by the Commission pursuant to this proceeding, be it mandatory detariffing, permissive tariffing or another alternative, is *applicable only to non-dominant carriers*, and is inapplicable to dominant carriers operating in the lesser, or non-competitive markets of local exchange or exchange access services.[11/] This distinction is critical because in a market that is not fully competitive, tariff filing requirements for dominant carriers are absolutely necessary because they serve to curtail the clandestine, anticompetitive pricing practices and service offerings of dominant carriers.

MFS underscores that its recommended policy of permissive forbearance does not, and cannot, apply to the local exchange services or access charges provided by dominant incumbent local exchange carriers ("ILECs"), because the outcome of permitting dominant carriers in a monopolistic market to refrain from filing tariffs would be adverse to competition and thus would undermine Congress' stated intention to promote the development of competition by opening all telecommunications markets to competition.[12/] As well, application of the Commission's detariffing proposal to essentially non-competitive carriers directly contravenes the Commission's stated intention in the NPRM, in which it limited this proposal to the competitive interexchange industry, declaring: "[w]e seek to promote competition by reducing or eliminating existing regulations that may no longer be in the public interest in the

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[11/] Arguably, incumbent local exchange carriers ("ILECs") that dominate the access service market might be considered dominant interexchange carriers in instances where they provide long distance services that use their own access services.

[12/] *See* S. CONF. REP. NO. 230, 104th Cong., 2nd Sess. 1 (1996).

increasingly competitive interexchange marketplace."[13]

MFS incorporates by reference its comments filed May 23, 1996, in response to Hyperion's Petition for Forbearance from tariff filing requirements for competitive access providers ("CAPs"). In those comments, MFS explains that, while mandatory tariff flings are no longer necessary for non-dominant CAPs, the public interest and the preservation of competition dictate that ILECs continue to file tariffs for their access services, to enable both the Commission and the telecommunications industry to detect and prevent instances of anticompetitive conduct.[14]

III. THE COMMISSION SHOULD ACCEPT ELECTRONIC FILINGS OR DISKETTES AS ALTERNATIVES TO TRADITIONAL TARIFF FILING METHODS.

In an open meeting held on March 31, 1996 to discuss significant provisions of the Telecommunications Act, the Commission stated that one of the goals behind its mandatory detariffing proposal is to reduce the millions of pieces of paper that the Tariffs Division receives, and must keep track of, on an annual basis. Compliance with the current tariff filing system involves tariffs that are expensive to draft, file, review and maintain, both for carriers and Commission staff, which inevitably results in a tremendous administrative burden on available resources.

An alternative, streamlined method of permissive, electronic filing would eliminate the current costs associated with massive tariff filings, and would benefit consumers in the form of lower prices for services. The submission of tariff filings via electronic methods, such as the

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[13] *NPRM* at 4.

[14] *Petition of Hyperion Telecommunications, Inc. for Forbearance from Tariff Filing Requirements for Competitive Access Providers*, DA 96-462, MFS Comments at 3-4, 7.

Internet, on a voluntary basis, such as the permissive detariffing proposal suggested by MFS and numerous other commenters in their initial comments and reiterated herein, would aid considerably in the Commission's effort to reduce the administrative burdens caused by existing tariff filing procedures.

As an alternative to its current tariff filing system, the Commission might consider the designation of an independent third party, or industry-supported entity, to function as collector and administrator of all tariff filings submitted by non-dominant interexchange service providers. This system might function in a similar manner to the North American Numbering Administration, where a third party would contract for the right to collect and publish all tariff filings by non-dominant IXCs. Under such a system, neither the Commission nor this designated entity would bear any responsibility for substantively reviewing and approving tariffs, which would serve to reduce significantly the current costs associated with such a timely administrative task.[15/] Competitors and customers alike would be afforded a centralized location in which to examine tariffs for their rates, terms and conditions, and would be able to file any complaints regarding such tariffs with the Commission, through the Section 208 complaint process.

Alternatively, the Commission could require that all tariff filings for non-dominant providers of interexchange service be submitted only electronically, either on diskette or posted on an Internet web site, thus eliminating the massive amounts of paperwork the Tariffs Division must contend with annually.

15/ This method is comparable to the Commission's current practice of accepting tariffs from non-dominant without substantively reviewing or approving them.

IV. CONCLUSION

While MFS appreciates the Commission's efforts to eliminate unnecessary regulations that stifle competition in the interexchange marketplace, the Commission's mandatory forbearance proposal is unauthorized under the Act and is inconsistent with the public interest. Tariff filings provide enormous benefits to the public by providing the dissemination of information regarding the rates, terms and conditions of services, greater vendor selection, and clarification of the legal rights and liabilities of both carriers and consumers. The majority of commenters, including MFS, have demonstrated sufficiently that a policy of permissive tariffing for non-dominant providers of interexchange service will serve the public interest by continuing to foster and to enhance competition in the interexchange marketplace. For the forgoing reasons, MFS urges the Commission to reconsider its tentative conclusion to forbid non-dominant providers of interexchange service from filing tariffs pursuant to Section 203 of the Act, and to adopt the industry-favored policy of permissive tariffing supported herein.

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 1996, copies of the foregoing REPLY COMMENTS OF MFS COMMUNICATIONS COMPANY, IN C., CC Docket No. 96-61, were sent via Messenger** or via First-Class Mail, U.S. postage prepaid, to the parties on the attached service list.

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